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HOUSE MEMORIAL 51

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Daniel R. Foley

A MEMORIAL

REQUESTING THE ATTORNEY GENERAL TO INVESTIGATE THE TERMS OF THE STATE'S CONTRACT TO PURCHASE AND MAINTAIN THE STATE'S VOTING SYSTEMS AND TO DETERMINE WHETHER THE CONTRACT WAS PROPERLY NEGOTIATED AND MADE IN ACCORDANCE WITH LAW.

WHEREAS, under the previous secretary of state, the office of the secretary of the state was left with a nearly three-million-dollar (\$3,000,000) deficit; and

WHEREAS, the attorney general has been requested to undertake an investigation into the three-million-dollar (\$3,000,000) deficit; and

WHEREAS, the current secretary of state, Mary Herrera, has done due diligence while holding her office by requesting a full audit of the budget deficit inherited during her tenure; and

WHEREAS, the federal government is undertaking an

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1 investigation into how nearly nine million dollars (\$9,000,000)
2 in federal election funds were used during the 2006 elections
3 to determine if the funds were inappropriately spent; and

4 WHEREAS, the taxpayers of New Mexico already paid more
5 than eighteen million dollars (\$18,000,000) for one thousand
6 nine hundred paper ballot tabulators and one thousand five
7 hundred eighty AutoMARK voting systems purchased from Election
8 Systems and Software, incorporated, also known as ES&S, in
9 2006; and

10 WHEREAS, previous contracts with voting system vendors
11 provided for the training of state and local election officials
12 in the operation and maintenance of their voting systems, thus
13 keeping recurring costs to a minimum; and

14 WHEREAS, maintenance costs under the service contract with
15 ES&S for its voting systems have already cost the state and its
16 counties in excess of one million dollars (\$1,000,000); and

17 WHEREAS, several states, including California, Colorado,
18 Indiana, West Virginia, Florida and Arkansas, have reported
19 problems with either the service or voting systems purchased
20 from ES&S that have warranted legal action; and

21 WHEREAS, ES&S, the sole supplier of voting systems for New
22 Mexico, contributed over fifty thousand dollars (\$50,000) to
23 the national association of secretaries of state at its meeting
24 in 2006 after the company was awarded the contract; and

25 WHEREAS, further investigation is needed to determine

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1 whether the contract between ES&S and the state was properly
2 negotiated and entered into in accordance with the law and
3 whether renegotiation or legal action is necessary or proper;

4 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF NEW MEXICO that the attorney
6 general be requested to investigate the terms of and process by
7 which the purchase and maintenance contracts were entered into
8 with ES&S by the state, including a full audit of all
9 contributions by and expenses of ES&S in the state; and

10 BE IT FURTHER RESOLVED that the attorney general report to
11 the appropriate legislative interim committee its findings and
12 its determination as to whether the contracts and the
13 procedures used to enter into the contracts were fair and
14 appropriate and whether renegotiation or any legal action may
15 be in order; and

16 BE IT FURTHER RESOLVED that a copy of this memorial be
17 transmitted to the attorney general.